Finally, there is the finding of the trial judges "that by section 16(4) of the Act the heroin which was concealed on the person of the first accused was deemed to be in the possession of the second accused." If this finding is correct, the second appellant is guilty of possession of the said 9.08 grams of heroin under section 6(a) of the Act. We have examined the record of the case with care and we cannot find any evidence to support the said finding of the trial judges. There was no evidence before them that the first appellant had the heroin concealed on his person with the knowledge and consent of the second appellant and section 16(4) of the Act was therefore inapplicable.

We find that there was no evidence in this case on which the second appellant could have been convicted of any offence under the act. His appeal is allowed and he is discharged.

For the reasons already given, we convict the first appellant of the offence of possession of 55.2 grams of heroin in contravention of section 6(a) of the Act and sentence him to 10 years' imprisonment.

Order accordingly.

Solicitor: *David Marshall.*

THE "PANGKALAN SUSU/PERMINA 3001"; RASU MARITIMA S.A. v. P.N. PERTAMBANGAN MINYAK DAN GAS BUMI NEGARA & ANOR.

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) July 25, 1977]

[Singapore — Civil Appeal No. 48 of 1976]

Shipping Law — Admiralty Suit in Rem — Charter of vessel to first respondents — Claim for arrears of charter hire — Arrest of ship — High Court (Admiralty Jurisdiction) Act, s. 4(4) — Meaning and scope of "beneficially owned" — Whether the first respondents were the beneficial owners of "Permina 3001" — High Court (Admiralty Jurisdiction) Act, s. 4(4).

Equity — Constructive trust — "Permina 3001" — Conditional sale of "Permina 3001" agreed between first and second respondents — First respondents paid 5 out of 72 equal monthly instalments — Whether second respondents held "Permina 3001" on trust for first respondent.

The appellants chartered the ship "Bruce Ruthi II" to the first respondents who fell into arrears amounting to US$3,929,090.24 for charter hire. The appellants arrested the ship "Permina 3001" on September 20, 1976. The "Permina 3001" at the date when the writ was issued was owned by the second respondents but was under the full control and possession of the first respondents under a previous agreement between one Greenock and the first respondents, the benefit of which had been assigned by Greenock to the second respondents on November 1, 1975.

The first and second respondents sought to set aside the writ and all subsequent proceedings for want of jurisdiction. The first respondents contended that on true construction of section 4(4) of the High Court (Admiralty Jurisdiction) Act (the Act), the "Permina 3001" was not beneficially owned as respects all the shares therein by the first respondents. The appellants contended that the words were wide enough to include the interest of a person who had only full control and possession of the ship arrested. The learned judge ([1977] 1 M.L.J. 141) held that at the date when the action was brought the "Permina 3001" was not beneficially owned as respects all the shares therein by the first respondents within the meaning of section 4(4) of the Act. The appellants appealed against the said judgment. They contended that in equity the first respondents as purchasers were the owners of "Permina 3001" and were entitled to all equitable ownership of the ship.

The issue before the court evolved around the meaning of "beneficially owned as respects all the shares therein" in the context of the Act.

Held, dismissing the appeal: (1) although a person with only full possession and control of a ship, such as a demise charterer, has the *beneficial use* of her, he does not have the beneficial ownership as respects all the shares in the ship and the ship is not "beneficially owned as respects all the shares therein" by him within the meaning of section 4(4) of the Act;

(2) the words "ownership" connotes title, legal or equitable whereas the expression "possession and control", however full and complete, is not related to title.

Cases referred to:-

(1) *The "Permina 108"* [1977] 1 M.L.J. 49.

(2) *The St. Merriel* 1963 P. 247.

(3) *The Andrea Ursula* [1973] 1 Q.B. 265.

COURT OF APPEAL.

Michael Thomas Q.C. and *C. Arul* for the appellants/plaintiffs.

Richard Stone Q.C. and *S. Selvadurai* for Pertamina.

S. Rajkumar for Ozark Shipping Co. S.A.

Wee Chong Jin C.J. (delivering the judgment of the Court): Rasu Maritima S.A., the plaintiffs/appellants, chartered the ship "Bruce Ruthi II" to Pertamina who fell into arrears amounting to US$3,929,090.24 for charterhire. They caused to be issued a writ in rem against the ship "Pangkalan Susu" otherwise known as "Permina 3001", which ship was arrested on September 20, 1976 pursuant to a warrant of arrest.

Pertamina, the first respondent and Ozark Shipping Co. S.A., the second respondent entered conditional appearances and subsequently separately moved the High Court to set aside the writ and all subsequent proceedings for want of jurisdiction. Indus Shipping Co. owns the ship "Bruce Ruthi II", the appellants are the disponent owners and Pertamina are the charterers under a time charterparty. The ship "Permina 3001", at the date when the writ was issued, was owned by Ozark Shipping Co. S.A., but was under the full control and possession of Pertamina under a "Purchase Contract" made on May 9, 1974 between Greenock Shipping Corporation and Pertamina, the benefit of which had been assigned by Greenock Shipping Corporation to Ozark Shipping Co. S.A. on November 1, 1975.

Pertamina's motion was heard before Rajah J. They contended that the court's admiralty jurisdiction cannot be invoked by an action in rem against the ship "Permina 3001" because, on the true construction of section 4(4) of the High Court (Admiralty Jurisdiction Act, the "Permina 3001" must have (and does not have) the same beneficial ownership as the "Bruce Ruthi II". This contention failed because this court in the case of *The "Permina 108"; v. Owners of "Permina 108" v. Martropico Compania Naviera S.A.*[1] rejected it.

Alternatively, Pertamina contended that on the true construction of section 4(4), the "Permina 3001"

is not "beneficially owned as respects all the shares therein" by Pertamina. Section 4(4) of the High Court (Admiralty Jurisdiction) Act provides as follows:—

"4(4). In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against —

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

Pertamina contended that the words "beneficially owned as respects all the shares therein" are not wide enough to include the interest of a person who, although not being the registered or legal or equitable owner of the ship arrested, was in full possession and control of the ship. They contended that the words are restricted to a person in whom the legal and equitable title is vested or in whom the equitable title is vested, the legal title being vested in another person. They relied on the decision of Hewson J. in *The St. Merriel*.[2]

Rasu Maritima S.A. contended that the words are wide enough to include the interest of a person who has only full control and possession of the ship arrested and relied on the decision of Brandon J. in *The Andrea Ursula*.[3]

Rajah J. declined to follow the decision of Brandon J. and held that at the date when the action was brought the "Permina 3001" was not "beneficially owned as respects all the shares therein" by Pertamina within the meaning of section 4(4) of our Act. Accordingly, he set aside the writ and all subsequent proceedings therein.

Rasu Maritima S.A. now appeals and Mr. Thomas, on their behalf, urges us to say that the construction placed on the words "beneficially owned as respects all the shares therein" in section 4(4) by Brandon J. is the correct one notwithstanding a later decision of Goff J. in the as yet unreported case of the *I Congreso del Partido* in which Goff J. declined to follow Brandon J. and held that these words "refer only to cases of equitable ownership, whether or not accompanied by legal ownership, and are not wide enough to include cases of possession and control without ownership, however full and complete such possession and control may be."

The question is what do the words "beneficially owned as respects all the shares therein" mean in the context of the Act. These words are not defined in the Act. Apart from authority, we would construe them to refer only to such ownership of a ship as is vested in a person who has the right to sell, dispose of or alienate all the shares in that ship. Our construction would clearly cover the case of a ship owned by a person who, whether he is the legal owner or not, is in any case the equitable owner of all the shares therein. It would not, in our opinion, cover the case of a ship which is in the full possession and control of a person who is not also the equitable owner of all the shares therein. In our opinion, it would be a misuse of language to equate full possession and control of a ship with beneficial ownership as respects all the shares in a ship. The word "ownership" connotes title, legal or equitable whereas the expression "possession and control", however full and complete, is not related to title. Although a person with only full possession and control of a ship, such as a demise charterer, has the *beneficial* use of her, in our opinion he does not have the beneficial ownership as respects all the shares in the ship and the ship is not "beneficially owned as respects all the shares therein" by him within the meaning of section 4(4).

Accordingly, our construction of the words "beneficially owned as respects all the shares therein" differs from that of Brandon J. who expressed his opinion in the following passages of his judgment in *The Andrea Ursula, supra*:—

"There is no definition in the Act of the expression 'beneficially owned' as used in section 3(4). It could mean owned by someone who, whether he is the legal owner or not, is in any case the equitable owner. That would cover both the case of a ship the legal and equitable title to which are in one person, *A*, and also the case of a ship the legal title to which is in one person, *A*, but the equitable title to which is in another person, *B*. In the first case the ship would be beneficially owned by *A*, and in the second case by *B*. Trusts of ships, express or implied, are, however, rare, and the words seem to me to be capable also of a different and more practical meaning related not to title, legal or equitable, but to lawful possession and control with the use and benefit which are derived from them. If that meaning were right, a ship would be beneficially owned by a person who, whether he was the legal or equitable owner or not, lawfully had full possession and control of her, and, by virtue of such possession and control, had all the benefit and use of her which a legal or equitable owner would ordinarily have.

... the expression 'beneficially owned' must be given the second of the two meanings which I suggested earlier that it was capable of having, and not the first. In other words 'beneficial owner' must be given a meaning which includes not only a demise charterer, but also any other person with similar complete possession and control who may thereby become liable on a claim within paragraphs (d) to (r) of section 1(1) of the Act."

It remains for us to deal with the other contention of Mr. Thomas on behalf of Rasu Maritima S.A. He contends that in any event, having regard to all the facts which are before the court and which are not in dispute, Pertamina were, at the time the action was brought, the beneficial or equitable owners of the "Permina 3001". He relies on the terms of an agreement dated May 9, 1974 between Greenock Shipping Corporation and Pertamina, the benefit of which had been assigned by the former to Ozark Shipping Co. S.A. on November 1, 1974.

Under the agreement Greenock Shipping Corporation (referred to therein as the "Seller") agreed "to cause to be built, launched and completed one Oil Tanker more fully described in Article I to be registered and owned by the Seller and to deliver and sell to Pertamina (referred to therein as the "Buyer") and the Buyer agreed "to purchase from the Seller and to accept delivery from the Seller the said vessel, all upon the terms and conditions hereinafter set forth."

The vessel was built and on or about March 29, 1976, Ozark Shipping Co. S.A. delivered the vessel, which was named "Pangkalan Susu", otherwise known

as "Permina 3001", to Pertamina who have since then been in full possession and control of and enjoyed the use of "Permina 3001". The "Permina 3001" is a single screw motor tanker of not less than 35,250 tons deadweight for the carriage of crude and/or dirty petroleum products. Her purchase price is to be paid in 72 equal monthly instalments commencing after delivery and acceptance of the vessel by Pertamina. When the present writ was issued Pertamina had paid five of the agreed 72 instalments. Ozark Shipping Co. S.A., the Seller, in the event of default on the part of Pertamina in performing its obligations, has the option to rescind the agreement and to withdraw and retake the vessel.

Until payment of the last instalment Pertamina at its own expense is obliged to insure and keep the vessel insured in the joint names of the Seller and the Buyer for the full commercial value of the vessel with an endorsement providing that in the event of total loss the insurance proceeds shall be paid to the Buyer less outstandings due to the Seller which shall be paid direct to the Seller. Upon payment in full the Seller has to transfer the title to the vessel free from all encumbrances and maritime liens to the Buyer or its nominees.

Mr. Thomas describes the agreement as a construction and conditional sale of a ship agreement. He submits that as the purchaser, Pertamina, has gone into possession of the ship which it has bought under the agreement, equity would regard the agreement, which is a binding agreement for the sale of property, as sufficient to constitute the purchaser the equitable owner and the seller the legal owner and trustee. Mr. Thomas submits that at the time when the action was brought the ship was property subject to a constructive trust, the seller being no more than trustee of the purchaser and holding the legal ownership of the ship only for the benefit of the purchaser. He submits that in equity the purchaser is the owner of the ship and is entitled to all equitable remedies to protect and preserve his equitable ownership of the ship.

What is a constructive trust? *Hanbury's* Modern Equity (9th Edition) at page 218 states: —

"A constructive trust is one which arises by operation of law, and not by reason of the intention of the parties, express or implied. The principle is that where a person who holds property in circumstances in which in equity and good conscience it should be held or enjoyed by another, he will be compelled to hold the property on trust for that other. Such a general statement is of little help, however, in determining whether or not a constructive trust exists. Equity has proceeded pragmatically in this field; an account of constructive trusts can do no more than record a number of separate situations in which they have been held to exist."

Snell's Principles of Equity (27th Edition) at page 185 states: —

"Definition. No satisfactory definition of a constructive trust has yet been enunciated, and perhaps none ever will be; for the concept is still uncertain and the boundaries obscure. A possible definition is that a constructive trust is a trust which is imposed by equity in order to satisfy the demands of justice and good conscience, without reference to any express or presumed intention of the parties. A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee. Yet general statements such as these leave unexplained the circumstances in which justice and good conscience require a trust to be imposed; and it may be impossible, and perhaps undesirable, to define or limit those circumstances."

However difficult it may be, as would appear from these passages, to define what a constructive trust is, we are of the opinion that equity, in all the circumstances, would not regard Ozark Shipping Co. S.A. as holding the "Permina 3001" on trust for Pertamina at the date when the action was brought. Rasu Maritima S.A. claims the right to arrest the "Permina 3001" as security for unpaid charterhire in respect of another vessel in which Ozark Shipping Co. S.A. had no proprietary interest, legal or equitable. There was no debt due to Rasu Maritima S.A. by Ozark Shipping Co. S.A. In those circumstances, equity would not impose a constructive trust on Ozark Shipping Co. S.A. to hold the "Permina 3001" on trust for Pertamina. It seems to us that neither justice and good conscience nor the conscience of equity requires equity to step in for the benefit of a third person and to the detriment of Pertamina and Ozark Shipping Co. S.A.

Furthermore, the agreement relied on is a conditional sale agreement under which the purchase price is payable in 72 equal monthly instalments. Until payment of the full purchase price the "Permina 3001" remains registered in the name of and owned by Ozark Shipping Co. S.A. who has the right to rescind the agreement and retake possession of the ship in the event of, *inter alia*, failure to pay any instalment on due date. At the material date only five of the monthly instalments had become payable and been paid. In these circumstances we are of the opinion that even at the instance of Pertamina, equity would not regard Pertamina as the equitable owner of the ship with the bare legal title in Ozark Shipping Co. S.A. At the material date, Ozark Shipping Co. S.A. had some beneficial interest in the ship which, in our judgment, is sufficient to disentitle Rasu Maritima S.A. from successfully invoking the admiralty jurisdiction of the court under section 4(4) of our Act.

For these reasons we would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Selvadurai & Emmanuel; Donaldson & Burkinshaw.*